

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

MICHAEL A. COX, *EX REL*
PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

Case No. 05882-CZ

v

Hon. Paula J. Manderfield

IRAKLY SHANIDZE, MICHAEL
SHANIDZE, ROSE HART and
IMEX MEDICAL EQUIPMENT &
SUPPLIES, a Michigan Limited Liability Company,
Jointly and Severally,

Defendants.

DONALD L. ALLEN, JR. (P36538)
Attorney for Plaintiff
Assistant Attorney General
P. O. Box 30218
Lansing, Michigan 48909
(517) 241-6500

JEFFREY M. LEIB (P16528)
Attorney for Defendants

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement and Release ("Agreement") is entered into between the State of Michigan, acting through the Department of Attorney General's Health Care Fraud Division, (referred to as the "State"), Irakly Shanidze, Michael Shanidze, Rose Hart and Imex Medical Equipment & Supplies, all collectively referred to as the "Parties."

II. PREAMBLE

As a preamble to this Agreement, the State alleges the following:

A. Imex Medical Equipment Supplies is a Michigan limited liability company, located at 15600 West 10 Mile Road, Unit 15, Southfield, Michigan, and is a licensed Medicaid Program provider that has provided medical supplies to Medicaid patients/recipients during the period of January 1, 2000, through June 2004.

B. From January 2000 through June 2004, (the period of the Covered Conduct), Imex Medical Equipment Supplies ("Imex") knowingly made false statements and/or misrepresentations of material facts to the Medicaid Program, submitted false claims or caused false claims to be submitted to the Medicaid Program, and accepted payment for false claims. In reliance on Imex's fraud, false statements, misrepresentation of material facts, knowing concealment of material facts, and fraudulent claims, the State, through the Medicaid Program, paid the claims for Medicaid benefits submitted by or on behalf of Imex.

C. Imex took monies it wrongfully received from the Medicaid Program for its own use. Imex did not repay, reimburse, or return to the Medicaid Program the moneys that it was not entitled to, or which exceeded the amount to which it was entitled to receive under the Medicaid Program. The Parties acknowledge that Irakly Shanidze owns 40% of Imex; Michael Shanidze owns 40% of Imex and Rose Hart owns 20% of Imex.

D. The State contends that Imex violated the Medicaid False Claims Act, MCL 400.601 *et seq.*

E. The Parties admit the matters alleged in A through D above, and further specifically acknowledges that it violated the Medicaid False Claims Act, MCL 400.601 *et seq.* The Parties further admit they defrauded the Michigan Medicaid Program and that the resultant obligation for repayment is non-dischargeable in bankruptcy.

F. In order to avoid the delay, uncertainty, inconvenience and expense of protracted litigation of these claims, the Parties and the State have reached a full and final settlement as set forth below.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration, the Parties agree as follows:

A. Imex agrees to pay to the State of Michigan \$1,100,000.00 (the "Settlement Amount"), payable as follows:

1) Imex shall deliver to the Department of Attorney General a certified check, cashier's check or money order payable to the State of Michigan in the amount of \$25,000.00 on or before August 25, 2005, and Imex shall deliver to the Department of Attorney General certified check, cashier's check, or money orders payable to the State of Michigan as follows:

(a) On the 15th day of each month commencing December 2005, the sum of \$10,000.00 following entry of this agreement;

(b) That the payment of \$10,000.00 per month shall continue until December 10, 2013, or earlier, if the entire amount of \$1,100,000.00 has been paid;

(c) No interest shall accrue on the unpaid indebtedness.

B. Subject to the exceptions in Paragraph 5 below, the State (on behalf of their respective officers, agents, agencies and departments) agrees to release Imex and its officers, members, managers, directors, shareholders, employees, successors and assigns from any civil or administrative monetary claim the State has or may have under the Medicaid False Claims Act,

MCL 400.601 *et seq* , or under common law theories of breach of contract, unjust enrichment, or fraud or any other civil statute through common law theories, for the Covered Conduct and time period set forth in Paragraphs II B, and C of this Agreement.

C. Simultaneous with the execution of this Agreement, the Parties, through their counsel, shall execute a stipulation to entry of an order dismissing the pending action denominated “Mike Cox, *ex rel* People of the State of Michigan vs. Michael Shanidze, Irakly Shanidze, Rose Hart and Imex” (Ingham County Circuit Court Case No. 05-882), without prejudice and without costs or attorneys fees payable by or to any Party to that pending action other than what is specified herein.

D. The Parties agree that, if the payment of any check or down payment of the settlement amount is not honored at the time of presentment at the bank on which it is drawn, or is otherwise found to be unpayable, this Agreement may be null and void at the option of the State who may, as one of its options, reinstate the pending action specified in Paragraph IIIC.

E. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including Imex) are all of the following:

- 1) Any liability to the State (or its agencies) for any conduct other than the Covered Conduct as described in Paragraphs IIB and C of this Agreement;
- 2) Any criminal liability other than that arising directly or indirectly from the Covered Conduct described Paragraphs IIB and C of this Agreement; and
- 3) Any administrative action, other than recovery of the above monies, by any State or Federal agency as a result of entering into this Agreement or the results of any other legal action.

F. Imex fully releases the State, its agencies, employees, servants, and agents from any claims (including attorneys fees, costs, and expenses of every kind and however denominated) that Imex asserted, could have asserted, or may assert in the future against the State, its agencies, employees, servants, and agents, related to the Covered Conduct as described in Paragraphs IIB and C of this Agreement and the State's investigation and prosecution thereof.

G. This Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any claims against any other person or entity.

H. Imex expressly warrants that it has reviewed its financial situation and that it currently is solvent, and expressly warrants that it can satisfy the financial obligations under this Agreement.

I. Imex further warrants that its commitments pursuant to this Agreement will not cause it to become insolvent.

J. The effective date of the Agreement shall be when the final signatory signs the Agreement.

K. In the event the parties, including Imex, commences, or a third party commences, before the obligations under this Agreement are satisfied, any case, proceeding, or other action (a) under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have any order for relief of Imex's debts, or seeking to adjudicate Imex as bankrupt or insolvent, or (b) seeking appointment of a receiver, trustee, custodian or other similar official for Imex, for all or any substantial part of Imex, the Parties agree as follows:

1) The Parties agree to personally pay any debt remaining as a result of the failure or inability of Imex to make full payment under the terms of this Agreement; and

further agree that they shall be responsible for any remaining debt in the same amount as indicated by their ownership interest as set forth in IIC above.

2) Imex's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. Section 547, and Imex will not argue or otherwise take the position in any such case, proceeding or action that:

(a) Imex's obligations under this Agreement may be avoided under 11 U.S.C. Section 547;

(b) Imex was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the State of Michigan hereunder; or

(c) The mutual promises, covenants and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Imex.

3) In the event that Imex's obligations under this Agreement are avoided for any reason, including, but not limited to, the exercise of a trustee's avoidance powers under the Bankruptcy Code, the State of Michigan, at its sole option, may rescind the releases in this Agreement, and bring any civil and/or administrative claim, action or proceeding against Imex or the Parties, at the State's option. If the State of Michigan chooses to do so, Imex agrees that:

(a) Any such claims, actions or proceedings brought by the State (including any proceedings to exclude Imex from participation in the Medicaid Program) are not subject to an "automatic stay" pursuant to 11 U.S.C. Section 362(a) as a result of the action, case or proceeding described in the first clause of

this paragraph, and that Imex will not argue or otherwise contend that the State's claims, actions or proceedings are subject to an automatic stay;

(b) Imex will not plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any such civil or administrative claims, actions or proceedings which are brought by the State of Michigan within ten calendar days of written notification to Imex, that the releases under this Agreement have been rescinded pursuant to this paragraph; and

4) Imex acknowledges its agreement in this paragraph is provided in exchange for valuable consideration provided in this Agreement

L. This Settlement Agreement contains the full and complete agreement between the Parties and Imex and shall not be modified in any manner except by written instrument executed by the Parties.

M. The undersigned individuals signing this Agreement on behalf of Imex represent and warrant that they are authorized by Imex to execute this Agreement. The undersigned State of Michigan signatory represent that he is signing this Agreement in his official capacity and that he is authorized to execute this Agreement.

N. Simultaneously with the execution of this Agreement, the parties shall enter a plea of guilty in the case of The People v Irakly Shanidze, *et al*, Case No. 05-2688, Michael Shanidze, 05-2687, Rose Hart, 05-2690, Imex, 05-2691, pending in the 54-B Judicial District of the State

of Michigan or such other court having jurisdiction to accept such a plea.

State of Michigan Department of Attorney General

By: Donald L. Allen, Jr.
Donald L. Allen, Jr.
Assistant Attorney General for the People
of the State of Michigan

Date: 8-12-05

Imex Medical Equipment Supplies

By: M. Shanidze
Date: 07.15.05

Irakly Shanidze

By: I. Shanidze
Date: 7/15/05

Michael Shanidze

By: M. Shanidze
Date: 07.15.05

Rose Hart

By: Rose Hart
Date: 7-15-05

Jeffrey M. Leib
Jeffrey M. Leib
Attorney for Defendants

Date: 7/15/05